



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
Denver, CO 80202-1129  
Phone 800-227-8917  
www.epa.gov/region08

Ref: 8ENF-W-NP

**CERTIFIED MAIL # 7009 3410 0000 2600 4246**  
**RETURN RECEIPT REQUESTED**

Incorp Services, Inc., Registered Agent for  
Titanium Builders, LLC  
919 South 7th Street, Suite 607  
Bismarck, North Dakota 58504

Re: Request for Information Pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318

To Whom It May Concern:

The U.S. Environmental Protection Agency is investigating the compliance of Titanium Builders, LLC (Company) with the requirements of the Clean Water Act. This pertains to the construction of Dakota Acres Apartments in New Town, North Dakota. As part of the EPA's investigation, the EPA requests that the Company provide the information requested with this letter. The EPA has the authority to solicit this information under section 308 of the Clean Water Act, 33 U.S.C. § 1318, in order to carry out its responsibilities for protecting our nation's water from pollution.

Please send the requested information no later than **thirty (30) days** of your receipt of this letter to the following:

U.S. EPA Region 8 (8ENF-W-NP)  
NPDES Enforcement Unit  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Attn: Monia Ben-Khaled

In accordance with the instructions in Enclosure 1, please provide the information requested in Enclosure 2. The Company's response to this request **must be accompanied by a signed and dated Statement of Certification**. It must be signed by an individual who is authorized by the Company to respond to this request. The Certification must state that the response is complete and contains all information and documentation available to the company that is responsive to this request. A sample Statement of Certification is Enclosure 3.

The Company may claim that the EPA should treat any of the solicited information as confidential business information (CBI). To make such a claim, the Company will need to follow the procedures in 40 C.F.R. part 2, subpart B (as promulgated at 41 Fed. Reg. 36902 on Sept. 1, 1976, 43 Fed. Reg. 39997 on Sept. 8, 1978, and 50 Fed. Reg. 51654 on Dec. 18, 1985). If the Company makes a confidentiality claim, the EPA will disclose the information covered by the Company's claim only as allowed by that

subpart. Please note that making a confidentiality claim does not guarantee that the EPA will agree that the information is entitled to confidential treatment. If the Company does not make such a claim when it submits the information to the EPA, the EPA may make the information available to the public without notifying the Company. The Company **is required to provide the requested information** even if it claims confidentiality.

If the Company is a small business, it may find the enclosed Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet (Enclosure 4) useful. This information sheet contains information on compliance assistance resources and tools available to small businesses. By including this information sheet, the EPA has not necessarily determined that the Company is a small business. SBREFA does not eliminate the Company's responsibility to respond to this information request.

It is very important that the Company respond to this request for information, and its attention to this matter is greatly appreciated. Please note that the failure to provide required information may potentially result in civil penalties of up to \$51,570 per day of violation, and that even harsher criminal consequences are possible in the case of deliberate false statements. (33 U.S.C. § 1319; see also 18 U.S.C. § 1001.)

This Request for Information is exempt from the approval requirements of the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq.

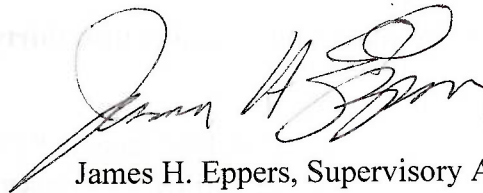
For any questions concerning this information request, the Company should contact Monia Ben-Khaled, NPDES Enforcement Unit, at 303-312-6209 or Ben-Khaled.Monia@epa.gov. If the Company is represented by an attorney who has questions, the attorney should contact Max Greenblum, EPA Enforcement Attorney, at 303-312-6108 or Greenblum.Max@epa.gov.

Thank you for your cooperation.

Sincerely,



Arturo Palomares, Director  
Water Technical Enforcement Program  
Office of Enforcement, Compliance,  
and Environmental Justice



James H. Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance,  
and Environmental Justice

Enclosures:

- (1) Instructions
- (2) Information Request
- (3) Statement of Certification
- (4) SBREFA information sheet

Cc: Todd Rothrock  
Titanium Builders, LLC  
8800 Raintree Street, Suite 145  
Scottsdale, Arizona 85260

## **ENCLOSURE 1:**

### **INSTRUCTIONS**

1. Please answer each numbered item and lettered sub-item in Enclosure 2 separately, and number your response to correspond with each item and sub-item.
2. Provide all information in your possession that is responsive to each item and sub-item in Enclosure 2. If you cannot provide any piece of information, please explain why. If any numbered item or sub-item is not applicable, please indicate N/A.
3. If you do not know or have available in your possession any of the requested information but learn about such information, you must supplement your response to the EPA. If, after submitting your response, you learn that any portion of your response is incomplete or false, or that it misrepresents the truth, you must notify the EPA as soon as possible of the exact manner in which the information is incomplete, false, or misleading.
4. If any information or document is responsive to this request and is not within your possession, custody or control, please identify each person from whom such information or documents may be obtained and where such information or documents are located.
5. If you have reason to believe that any other person may be able to provide additional details or documents, please provide the name, address, and, if you know it, the telephone number of each person. Additionally, include a description of the additional information or documents you believe that this person may have.
6. For purposes of this request, the following definitions apply:

“Best Management Practices” (BMPs) means any schedule of activities, prohibition of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

“Person” includes any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state or interstate body.

“Permit” refers to the 2012 National Pollution Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Construction Activities.

“Project” includes all construction related to Dakota Acres Apartments, 815 College Drive, New Town, North Dakota 58763.

“Site” means the location of the Dakota Acres Apartments, 815 College Drive, New Town, North Dakota 58763.

“Stormwater Control Measures” refers to any BMP or other method used to prevent or reduce the discharge of pollutants to waters of the United States.

“SWPPP” means Stormwater Pollution Prevention Plan.

“You” and the “Company” mean Titanium Builders, LLC and any of its officers, directors, employees, or agents.

## **ENCLOSURE 2:**

### **INFORMATION REQUEST**

Please provide the following information:

1. Provide the date when the Company's construction activity at the Site began. State whether the Company's construction activity is still occurring and, if not, when it ended.
2. Provide a list of each of the Company's phases of construction, at the Site, from the beginning of construction activity to the present. For each phase of construction, include its start date, its end date (or, if it is ongoing, its projected end date), and its current status. For any phase of the Project for which the Company has been issued a Permit, include the permit number. For any phase of the Project for which the Company has not issued such a Permit, provide an explanation for why the Permit was not issued.
3. Describe all contractual arrangements between you and any other person, including MP New Town, LLC, regarding construction of any and all phases of the Project. Include contractual provisions relating to erosion and sediment controls, other stormwater control measures, concrete truck washouts, and disposal of building materials, chemical wastes, litter, and sanitary waste. Describe arrangements for enforcement of these contractual provisions. Provide copies of representative contractual provisions.
4. Describe all contractual provisions and/or change orders related to the scope of work between you and any other person, including MP New Town, LLC, regarding construction of any and all phases of the Project. Provide copies of representative contractual provisions.
5. Identify, by name, title, and current business address, each responsible individual, including each superintendent and construction foreman, for all construction related activities you have engaged in at the Site from the time of your first involvement at the Site until today.
6. Describe all arrangements between you and any other person regarding environmental permitting, environmental controls, inspections, and documentation of inspections at the Site. Provide representative contractual provisions.
7. Identify, by name, title, and current business address, each individual who has been responsible for the Company's environmental compliance and permitting at the Site.
8. Describe any structural controls (e.g., straw bale dikes, silt fences, check dams, drain inlet protection, sediment traps, drainage diversions) that were installed or

implemented at the Site for controlling stormwater discharges. Indicate when and by whom each such structural control was installed and removed.

9. Provide a copy of each of the following for the Site:

- a. Each Notice of Intent (NOI) or application for an individual permit you submitted for authorization to discharge stormwater from the Site.
- b. Any notice of transfer of stormwater permit coverage for the Site from another entity to you, or from you to another entity.
- c. The permit certification page showing the effective date of your coverage under the Permit from the Site (or, if applicable, any individual permit authorizing you to discharge stormwater from the Site).
- d. The SWPPP for the Site, including all revisions.
- e. All site maps of the Site associated with the SWPPP, including any drainage maps. On each map, identify the types and locations of structural controls (e.g., straw bale dikes, silt fences, check dams, drain inlet protection, sediment traps, drainage diversions) you installed. Include the date when the structural controls were installed and removed if not clearly indicated on the site map(s).
- f. The name and title or position of each person who provided day-to-day operational control overseeing implementation of the SWPPP and each such person's current business address and telephone number.
- g. All reports for stormwater-related self-inspections you have conducted at the Site. If any such self-inspections were conducted by any other entity, indicate the type of agreement you had with the other entity to conduct these inspections. If that agreement was written, provide a copy.
- h. All dates the self-inspections referenced above were conducted and any documentation you may have that may help prove that such self-inspections in fact occurred. If you provided a report of each self-inspection in response to subpart g, above, you need not answer this subpart.
- i. Documentation of all corrective actions and maintenance measures identified in the self-inspection reports, including requisite changes to the SWPPP, with the dates corrective actions or maintenance measures were taken. This includes, but is not limited to, corrective actions to address discharges of sediment or other pollutants from the Site; stormwater control measures that needed to be maintained; stormwater control measures that failed to operate as designed or proved inadequate for a particular location; and additional

stormwater control measures that were needed but not in place at the time of each inspection.

- j. A narrative description and documentation of any stabilization measures implemented at the Site after the end of construction activities, including the date(s) of implementation.
  - k. Any documents exchanged between you, and/or any of your contractors or subcontractors, relating to stormwater, that are not included in the information requested above.
  - l. Any photographs showing the condition of the Site, structural controls, or waterways.
  - m. For any pond on the Site, provide engineering designs and calculations.
10. List each waterbody (e.g., creek, river, pond) and/or municipal separate storm sewer system (MS4) to which stormwater from the Site flowed.

**ENCLOSURE 3:**

**STATEMENT OF CERTIFICATION**

Titanium Builders, LLC

Request for Information Pursuant to Section 308 of the Clean Water Act

Statement of Certification

I certify under penalty of law that the foregoing responses and attachments to the EPA's Request for Information Pursuant to the Clean Water Act (Request) were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. The response and attachments contain all documents and information responsive to the Request that are known to me following a complete and thorough review of all information and sources available to me. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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Signature Date

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Printed Name

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Official Title





## U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

### Small Business Programs

[www.epa.gov/smallbusiness](http://www.epa.gov/smallbusiness)  
EPA's Office of Small Business Programs (OSBP) advocates and fosters opportunities for direct and indirect partnerships, contracts, and sub-agreements for small businesses and socio-economically disadvantaged businesses.

### EPA's Asbestos Small Business Ombudsman

[www.epa.gov/sbo](http://www.epa.gov/sbo) or 1-800-368-5888  
The EPA Asbestos and Small Business Ombudsman (ASBO) serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

### EPA's Compliance Assistance Homepage

[www2.epa.gov/compliance](http://www2.epa.gov/compliance)  
This page is a gateway industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

### EPA's Compliance Assistance Centers

[www.assistancecenters.net](http://www.assistancecenters.net)  
EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

### Agriculture

[www.epa.gov/agriculture/](http://www.epa.gov/agriculture/)

### Automotive Recycling

[www.ecarcenter.org](http://www.ecarcenter.org)

### Automotive Service and Repair

[ccar-greenlink.org/](http://ccar-greenlink.org/) or 1-888-GRN-LINK

### Chemical Manufacturing

[www.chemalliance.org](http://www.chemalliance.org)

### Construction

[www.cicacenter.org](http://www.cicacenter.org) or 1-734-995-4911

### Education

[www.campuserc.org](http://www.campuserc.org)

### Food Processing

[www.fpeac.org](http://www.fpeac.org)

### Healthcare

[www.hercenter.org](http://www.hercenter.org)

### Local Government

[www.lgean.org](http://www.lgean.org)

### Metal Finishing

[www.nmfrc.org](http://www.nmfrc.org)

### Paints and Coatings

[www.paintcenter.org](http://www.paintcenter.org)

### Printing

[www.pneac.org](http://www.pneac.org)

### Ports

[www.portcompliance.org](http://www.portcompliance.org)

### Transportation

[www.tercenter.org](http://www.tercenter.org)

### U.S. Border Compliance and Import/Export Issues

[www.bordercenter.org](http://www.bordercenter.org)

### EPA Hotlines, Helplines and Clearinghouses

[www2.epa.gov/home/epa-hotlines](http://www2.epa.gov/home/epa-hotlines)  
EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

### Clean Air Technology Center (CATC) Info-line

[www.epa.gov/ttn/catc](http://www.epa.gov/ttn/catc) or 1-919-541-0800

### Superfund, TRI, EPCRA, RMP and Oil Information Center

[www.epa.gov/superfund/contacts/infocenter/index.htm](http://www.epa.gov/superfund/contacts/infocenter/index.htm) or 1-800-424-9346

### EPA Imported Vehicles and Engines Public Helpline

[www.epa.gov/otaq/imports](http://www.epa.gov/otaq/imports) or 734-214-4100

### National Pesticide Information Center

[www.npic.orst.edu/](http://www.npic.orst.edu/) or 1-800-858-7378

### National Response Center

**Hotline** to report oil and hazardous substance spills - [www.nrc.uscg.mil](http://www.nrc.uscg.mil) or 1-800-424-8802

### Pollution Prevention Information Clearinghouse (PPIC) -

[www.epa.gov/opptintr/ppic](http://www.epa.gov/opptintr/ppic) or 1-202-566-0799

### Safe Drinking Water Hotline -

[www.epa.gov/drink/hotline/index.cfm](http://www.epa.gov/drink/hotline/index.cfm) or 1-800-426-4791

### Stratospheric Ozone Protection Hotline

[www.epa.gov/ozone/comments.htm](http://www.epa.gov/ozone/comments.htm) or 1-800-296-1996

### Toxic Substances Control Act (TSCA) Hotline

[tsc hotline@epa.gov](mailto:tsc hotline@epa.gov) or 1-202-554-1404

### Small Entity Compliance Guides

<http://www.epa.gov/sbrefa/compliance-guides.html>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

### Regional Small Business Liaisons

<http://www.epa.gov/sbo/rsbl.htm>

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

### State Resource Locators

[www.envcap.org/statetools](http://www.envcap.org/statetools)

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

### State Small Business Environmental Assistance Programs (SBEAPs)

[www.epa.gov/sbo/507program.htm](http://www.epa.gov/sbo/507program.htm)

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

### EPA's Tribal Portal

[www.epa.gov/tribalportal/](http://www.epa.gov/tribalportal/)

The Portal provides access to information on environmental issues, laws, and resources related to federally recognized tribes.

### EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

### EPA's Small Business Compliance Policy

[www2.epa.gov/enforcement/small-businesses-and-enforcement](http://www2.epa.gov/enforcement/small-businesses-and-enforcement)

This Policy offers small businesses special incentives to come into compliance voluntarily.

### EPA's Audit Policy

[www2.epa.gov/compliance/epas-audit-policy](http://www2.epa.gov/compliance/epas-audit-policy)

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

### Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

### Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

*EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.*